

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

75-6094

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee-Libellant,

v.

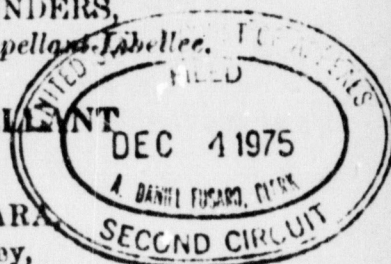
ONE 1975 CADILLAC ELDORADO COUPE, NEW
YORK STATE REGISTRATION 5G0-EVN, REGIS-
TERED TO TOMMIE KENNETH SAUNDERS,

Appellant-Libellee.

BRIEF FOR APPELLEE-LIBELLANT

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United States Court of Appeals

For the Second Circuit

Docket No. 75-6094

UNITED STATES OF AMERICA,

Appellee-Libellant,

v.

ONE 1975 CADILLAC ELDORADO COUPE, NEW YORK
STATE REGISTRATION 560-EVN, REGISTERED
TO TOMMIE KENNETH SAUNDERS,

Appellant-Libellee.

On Appeal From The United States District Court
For The Western District of New York

BRIEF FOR APPELLEE-LIBELLANT

Preliminary Statement

The United States filed suit in the United States District Court for the Western District of New York against One 1975 Cadillac Eldorado Coupe, New York State Registration 560-EVN, Registered To Tommie Kenneth Saunders, seeking a judicial order of condemnation and forfeiture of the above-mentioned vehicle. The United States Secret Service had seized this vehicle on March 14, 1975 under the authority of 49 U.S.C., § 781 and § 782 and the Department of the Treasury had advised Mr. Saunders that a petition for

remission of the vehicle would not be granted. The matter came on before the Honorable John T. Curtin for a trial on May 2, 1975 in accordance with Title 19, United States Code, Section 1610.¹ In a Decision and Order dated August 5, 1975, Judge Curtin directed that the relief requested by the Government should be granted and that an appropriate decree of condemnation and forfeiture be entered in favor of the United States. The final decree of condemnation and forfeiture was signed by Judge John T. Curtin on August 13, 1975 based upon the prior decision of August 5, 1975. The libellee-appellant appeals from this judgment.

Statement of Facts

The Government concurs with the findings of fact of Judge Curtin in his Decision of August 5, 1975, as set forth in the appellant-libellee's statement of facts in their brief. Therefore, Government will not file a detailed statement of facts with this brief.

The Government would urge that Rule 52(a) of the Federal Rules of Civil Procedure is applicable here, and, therefore, findings of fact made by the Trial Judge sitting without a jury should not be set aside "unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Rule 52(a).

Question Presented

1. Was it improper for the District Court to find that the vehicle was used to transport the counterfeit money?

¹ If the value returned by the appraiser of any vessel, vehicle, merchandise, or baggage so seized is greater than \$2,500, the collector shall transmit a report of the case, with the names of available witnesses, to the United States attorney for the district in which the seizure was made for the institution of the proper proceedings for the condemnation of such property.

POINT I

The District Court's findings that the vehicle was used to transport the counterfeit money was proper and should not be set aside.

The law makes clear that it is unlawful to use any vehicle for the transportation, concealment or possession of any contraband article, or to use any vehicle to facilitate any concealment, transportation, or possession of a contraband article.² Further, Section 781 puts counterfeit moneys within the purview of contraband articles mentioned in the statute.³

Section 782 of Title 49, United States Code, makes any vehicle used unlawfully under Section 781 subject to seizure and forfeiture.⁴

The burden of proof in a forfeiture proceeding is upon the claimant once the Government has shown that probable cause

² It shall be unlawful (1) to transport, carry or convey any contraband article in, upon or by means of any vessel, vehicle, or aircraft; (2) to conceal or possess any contraband article in or upon any vessel, vehicle, or aircraft, or upon the person of anyone in or upon any vessel, vehicle, or aircraft; or (3) to use any vessel, vehicle, or aircraft to facilitate the transportation, carriage, conveyance, concealment, receipt, possession, purchase, sale, barter, exchange, or giving away of any contraband article. 49 U.S.C., § 781(a).

³ Any falsely made, forged, altered, or counterfeit coin or obligation or other security of the United States or of any foreign government; or any material or apparatus, or paraphernalia fitted or intended to be used, or which shall have been used, in the making of any such falsely made, forged, altered, or counterfeit coin or obligation or other security. 49 U.S.C., § 481(b)(3).

⁴ Any vessel, vehicle, or aircraft which has been or is being used in violation of any provision of section 781 of this title, or in, upon, or by means of which any violation of said section has taken or is taking place, shall be seized and forfeited . . . 49 U.S.C., § 482.

exists for the institution of the suit.⁵ In *United States v. One 1971 Chevrolet Corvette Auto*, 496 F.2d 210 (5th Cir. 1974), the Court stated:

"The showing required of the Government is satisfied when there is a 'reasonable ground for belief of guilt,' *Carroll v. United States*, 267 U.S. 132 (1925), supported by less than prima facie proof, but more than mere suspicion." *United States v. One 1971 Chevrolet Corvett Auto*, *supra*, at 212.

Certain facts heard by the District Court are undisputed for purposes of this appeal. The United States Secret Service agents had made a previous buy of \$10.00 counterfeit Federal Reserve notes from Tommie Saunders on March 4, 1975. (Appendix 2). Further, that a subsequent buy of counterfeit \$10.00 notes was set at Saunders' gas station on March 14, 1975. (Appendix 2). Shortly before the sale was to commence, Saunders left the gas station in the subject vehicle and returned to the gas station a short time later. (Appendix 2). Saunders proceeded directly from the subject vehicle to the Secret Service Agents and the sale consummated immediately thereafter. (Appendix 4).

The District Court found that regardless of why Saunders left the gas station prior to the sale, that he either had the package of counterfeit notes on his person or in the subject

⁵ All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of vessels and vehicles for violation of the customs laws: . . . shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, insofar as applicable and not inconsistent with the provisions hereof. 49 U.S.C. § 784.

In all suits or actions brought for the forfeiture of any vessel, vehicle, merchandise, or baggage seized under the provisions of any law relating to the collection of duties on imports or tonnage, where the property is claimed by any person, the burden of proof shall lie upon such claimant Provided, that probable cause shall be first shown for the institution of such suit or action, to be judged of by the court, subject to the following rules of proof: 19 U.S.C., Section 1615.

vehicle when he returned to consummate the sale. (Appendix 5).

After a trial of this matter, the District Court found that there was probable cause to believe the vehicle was used to transport the counterfeit money.

"Considering all of the evidence presented in this case, there is no doubt that Mr. Saunders used the Cadillac to transport the counterfeit money to make his appointed sale to the Secret Service agents." (Appendix 6).

The testimony heard by, and believed by the District Court, (Appendix 4), establishes the requisite "nexus" between the use of the vehicle and the contraband transaction, to bring it within the forfeiture provisions of Section 782. *United States v. One Chevrolet Corvette, supra*, at page 212.

Appellant urges that merely because the vehicle was used to arrive at the site of the transaction of the counterfeit notes, that there is no specific proof that the vehicle was part of this transaction. (Appendix Br. at Page 5). This argument falters in light of the District Court's finding that "in this case the Cadillac was actually used to transport the counterfeit funds." (Appendix 5).

In *United States v. LaVecchia*, 513 F.2d 1210 (2nd Cir. 1975), the Court found that there was probable cause to believe the vehicle had been or was being used to transport contraband, even though the agents knew that the car was not used to transport the counterfeit money directly to the site of the sale. In the instant case, we have subject vehicle actually taking the money to the actual site of the sale. *LaVecchia* could also favorably cite the decision of *United States v. Capria*, 501 F.2d 267 (2nd Cir. 1974) wherein the Court stated: "If agents have probable cause to believe that a car is or has been used for carrying contraband, they may summarily seize it pursuant to the federal forfeiture statutes and search it." At 280.

Section 782 clearly requires the forfeiture of any vehicle or any contraband article has been physically within the vehicle. *United States v. One 1971 Porsche Coupe, V.I. No. 9111100355*, 364 F.Supp. 745 (E.D.Pa.).

Conclusion.

For all of the foregoing reasons, the judgment of the District Court should be affirmed.

Respectfully submitted,

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AFFIDAVIT OF SERVICE BY MAIL

State of New York) RE: U. S. A.
County of Genesee) ss.: v
City of Batavia) One 1975 Cadillac Eldorado Coupe et al

Docket No. 75-6094

I, Leslie R. Johnson being
duly sworn, say: I am over eighteen years of age
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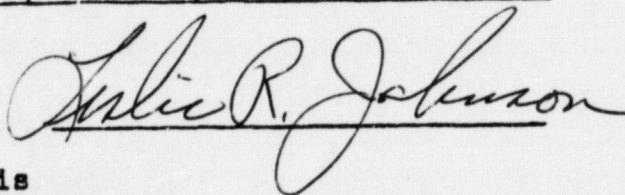
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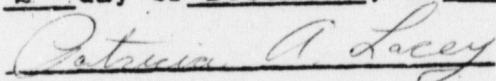
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502 U. S. Court House, Buffalo, New York 14202



Sworn to before me this

2 day of December, 1975



PATRICIA A. LACEY
NOTARY PUBLIC, State of N.Y., Genesee County
My Commission Expires March 30, 191977